

IN THE UNITED STATES DISTRICT COURT IN AND
FOR THE DISTRICT OF DELAWARE

KIA THOMAS and JEROME PITTS, SR,)
As Guardians ad Litem for J)
P , a minor,)

Plaintiffs)

v.)

C.A. No.

08 205

THE BOARD OF EDUCATION OF THE)
BRANDYWINE SCHOOL DISTRICT;)
JOSEPH BRUMSKILL, MARK)
HUXSOLL, SANDRA SKELLEY, OLIVIA)
JOHNSON-HARRIS, CRAIG GILBERT,)
DEBRA HEFFERNAN and NANCY)
DOOREY, all individually and in their)
official capacities as members of the Board)
of Education of the Brandywine School)
District; BRUCE HARTER, individually)
and his official capacity as Superintendent)
of the Brandywine School district; and)
RACHEL HOLT, individually,)

Defendants.)

NOTICE OF REMOVAL

Defendants, The Board of Education of the Brandywine School District, Joseph Brumskill, Mark Huxsoll, Sandra Skelley, Olivia Johnson-Harris, Craig Gilbert, Debra Heffernan and Nancy Doorey, individually and in their official capacities as members of the Board of Education of the Brandywine School District, Bruce Harter, individually and in his official capacity as Superintendent of the Brandywine School District, (hereinafter "Defendants"), by and through their undersigned counsel, hereby give notice that this matter has been removed pursuant to 28 U.S.C. § 1441, to the United States District Court for the District of Delaware. The grounds for removal are as follows:

1. Plaintiffs Kia Thomas and Jerome Pitts, Sr., as Guardians ad Litem for J P , a minor, (hereinafter “Plaintiffs”) commenced this action, entitled *Kia Thomas and Jerome Pitts, Sr., as Guardians ad Litem for J , a minor, vs. Board of Education of the Brandywine School District, Jerome Brumskill, Mark Huxsoll, Sandra Skelley, Olivia Johnson-Harris, Craig Gilbert, Debra Heffernan, and Nancy Doorey, all individually and in their official capacities as members of the Board of Education of the Brandywine School District; Bruce Harter, individually and in his official capacity as Superintendent of the Brandywine School District; and Rachel Holt, individually,* in the Superior Court of the State of Delaware in and for New Castle County (C.A. No. 08C-02-375). On information and belief, the Complaint (“Complaint”) was filed on or about February 27, 2008.

2. Defendants first obtained a copy of Plaintiff’s Complaint when it was served on March 31, 2008. A copy of the Complaint and Summons are attached as Exhibit 1.

3. No further proceedings in this matter have been had in the Superior Court of the State of Delaware in and for New Castle County.

4. This action includes a federal claim pursuant to 42 U.S.C. § 1983, conferring original jurisdiction upon this court of any civil action arising under the laws of the United States.

5. Plaintiffs allege that Defendants adopted and maintained a policy, practice, or custom of deliberate indifference to the constitutional right of Plaintiff, to instances of known or suspected sexual abuse of students by teachers by failing to take action necessary to prevent sexual abuse of students by a teacher employed with Defendants.

6. Plaintiffs further allege that their constitutional right to be free from state-imposed violations of bodily integrity have been denied under the Fourteenth Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

7. To the extent Plaintiff is asserting any claims under state law, this Court has supplemental jurisdiction over said claims pursuant to 28 U.S.C. § 1367.

8. This Notice of Removal is being filed within 30 days of the Defendants' receipt of the Complaint and is hereby timely filed under 28 U.S.C. § 1446(b).

9. Defendants have filed a true and correct copy of the Notice of Removal with the Superior Court of the State of Delaware in and for New Castle County. A copy of the Notice is attached hereto as Exhibit 2.

WHEREFORE, Defendants respectfully request that this action now pending against them in the Superior Court of the State of Delaware in and for New Castle County, be removed therefrom to this Court and that this action be placed upon the docket of this Court for further proceedings, as though this action originally had been instituted in this Court.

Respectfully submitted,

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Barry M. Willoughby, Esquire (No. 1016)

Maribeth L. Minella, Esquire (No. 4185)

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Attorneys for Defendants

Dated April 9, 2008


CERTIFICATE OF SERVICE

I, Barry M. Willoughby, Esquire, hereby certify that on April 9, 2008 I caused two paper copies of the **Notice of Removal** and this certificate of service to be delivered via U.S. Mail to:

Thomas S. Neuberger, Esquire
The Nueberger Firm, P.A.
Two East Seventh Street, Suite 302
Wilmington, DE 19801

And

Rachel Holt
Baylor Women's Correctional Institution
660 Baylor Boulevard
New Castle, DE 19720



Barry M. Willoughby, Esquire (No. 1016)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Kia Thomas and Jerome Pitts, Sr., as
Guardians ad Litem for J P
a Minor

(b) County of Residence of First Listed Plaintiff New Castle
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Thomas S. Neuberger, Esq.
Two E. Seventh St., Ste 302
Wilmington, DE 19801

(302) 655-0582

DEFENDANTS

Board of Education of the Brandywine
School District,

County of Residence of First Listed Defendant New Castle
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Barry M. Willoughby, Esq.
1000 West St., 17th Fl., PO Box 391
Wilmington, DE 19801-0391

(302) 571-6666

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Consumer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Recopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 1983

Brief description of cause:

Civil Rights denied under Fourteenth Amendment and 42 USC Sec. 1983

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG JUDGE

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. _____

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

I HEREBY ACKNOWLEDGE RECEIPT OF 10 COPIES OF AO FORM 85.

4/9/08

(Date forms issued)

[Signature]

(Signature of Party or their Representative)

FRANK JOYCE / PARCELS, INC.

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action